

[Cite as *State v. Sappington*, 2010-Ohio-1783.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-988
v.	:	(C.P.C. No. 05CR11-7645)
	:	
Ken Sappington,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 20, 2010

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*,
for appellee.

Ken Sappington, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Ken Sappington, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to withdraw guilty plea. For the following reasons, we affirm that judgment.

{¶2} In 2005, a Franklin County Grand Jury indicted appellant with a number of charges arising out of an attempted burglary. Appellant initially entered a not guilty plea. Appellant subsequently withdrew that plea and entered a guilty plea to one count of attempted murder with a firearm specification and one count of robbery. The trial court accepted appellant's guilty plea, found him guilty, and on April 25, 2006, sentenced him to ten years in prison. Appellant did not appeal.

{¶3} Two and one-half years later, on December 9, 2008, appellant filed a motion to withdraw his guilty plea. Appellant claimed that his trial counsel erroneously advised him that he would only receive a four and one-half year prison sentence. The trial court denied appellant's motion, noting that appellant entered his guilty plea knowingly, voluntarily, and intelligently. This court affirmed. *State v. Sappington*, 10th Dist. No. 09AP-86, 2009-Ohio-4144.

{¶4} Subsequently, on July 24, 2009, appellant filed another motion to withdraw his guilty plea. In this motion, appellant argued that the trial court failed to comply with Crim.R. 11 when it accepted appellant's guilty plea in 2006. The trial court denied appellant's motion, based on res judicata and appellant's failure to demonstrate manifest injustice.

{¶5} Appellant appeals and assigns the following errors:

[1.] APPELLANT'S PLEA WAS INVOLUNTARY[,] UNKNOWINGLY[,] AND UNINTELLIGENTLY MADE.

[2.] THE TRIAL COURT ERRED WHEN THE COURT ABUSED ITS DISCRETION DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA.

{¶6} Appellant contends in his two assignments of error that the trial court abused its discretion by denying his motion to withdraw his guilty plea. We disagree.

{¶7} Crim.R. 32.1 permits a motion to withdraw a guilty plea "only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." "Manifest injustice relates to some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process." *State v. Williams*, 10th Dist. No. 03AP-1214, 2004-Ohio-6123, ¶5.

{¶8} A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court. *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph two of the syllabus. Therefore, this court's review of a trial court's denial of a post-sentence motion to withdraw a guilty plea is limited to a determination of whether the trial court abused its discretion. *State v. Conteh*, 10th Dist. No. 09AP-490, 2009-Ohio-6780, ¶16 (citing *State v. Peterseim* (1980), 68 Ohio App.2d 211). An abuse of discretion implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Widder*, 146 Ohio App.3d 445, 2001-Ohio-1521, ¶6. Absent an abuse of discretion on the part of the trial court, its decision denying a post-sentence motion to withdraw a guilty plea must be affirmed. *State v. Xie* (1992), 62 Ohio St.3d 521, 527.

{¶9} The trial court denied appellant's motion for two reasons: res judicata and his failure to demonstrate manifest injustice. Both grounds support the trial court's decision.

{¶10} Under the doctrine of res judicata, a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *State v. Wooden*, 10th Dist. No. 02AP-473, 2002-Ohio-7363, ¶19 (citing *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379). Res judicata prevents repeated attacks on a final judgment and applies to issues that were or might have been previously litigated. *State v. Brown*, 8th Dist. No. 84322, 2004-Ohio-6421. Thus, courts have applied res judicata to preclude a defendant from raising an issue in a second motion to withdraw where the defendant could have but did not raise the issue in a previously filed postconviction motion to withdraw. *State v. Sneed*, 8th Dist. No. 84964, 2005-Ohio-1865, ¶17; *State v. McFarland*, 7th Dist. No. 08 JE 25, 2009-Ohio-4391, ¶18; *State v. Vernon*, 11th Dist. No. 2006-L-146, 2007-Ohio-

3376, ¶21; *State v. Hazel*, 10th Dist. No. 08AP-1002, 2009-Ohio-2144 (Bryant, J., concurring) (res judicata bars second motion to withdraw guilty plea when claims in that motion were not raised in first motion to withdraw).

{¶11} Appellant's first motion to withdraw only alleged the ineffective assistance of counsel as grounds for relief. In his second motion to withdraw, appellant claimed that the trial court failed to comply with Crim.R. 11 when it accepted his guilty plea. Appellant could have but did not raise that claim in his first motion to withdraw. Accordingly, res judicata precludes appellant from asserting the claim in a second motion to withdraw, and the trial court properly denied appellant's motion to withdraw on this ground. *State v. Holcomb*, 9th Dist. No. 21637, 2003-Ohio-6322, ¶7 (res judicata precluded defendant from raising failure of trial court to comply with Crim.R. 11 in second motion to withdraw where issue not raised in previous motion to withdraw).

{¶12} Even if we considered appellant's claim, it would fail on the merits. Crim.R. 11 requires a trial court to explain a number of constitutional and nonconstitutional rights to a defendant before entering a guilty plea. *Conteh* at ¶8. The transcript of appellant's plea hearing indicates the trial court complied with these requirements. The trial court did not abuse its discretion by denying appellant's motion to withdraw guilty plea. Accordingly, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.
